

## **300 CONDUCT OF BOARD MEMBERS**

### **300 OVERVIEW**

State law establishes that a director of a DAA is an appointed state officer of a state institution. As a Fair Board (Board) Director of a public body, a director must abide by the laws that govern the operation of the public's business. The public's business must be conducted openly and must remain free from the appearance of improper actions. First and foremost, DAA directors must put the interests of the fair above special interests and/or their own personal financial interests. This means avoiding even the appearance of conflict of interest.

Appendixes C through K of this Chapter contain a summary description of California's conflict of interest laws prepared by the Attorney General's Office. It is designed to help affected parties, including Fair Board Directors, identify situations that may require additional legal interpretation.

### **301 PARTICIPATION IN EVENTS AT AND/OR DURING DIRECTOR'S FAIR**

Directors, fair management, and/or their spouses are not eligible to exhibit at their own district, county or citrus fair except in timed events. Under no circumstances shall a director, manager and/or their spouse be eligible to collect money prizes or other awards at their respective fair.

Department heads, judges, staff, anyone directly involved in the judging process, and their spouses, are not allowed to exhibit or sign entry forms in any division in which they or their spouse are directly involved.

Minor children of Directors, Chief Executive Officer, Department Supervisors, staff and/or committee members may exhibit animals or articles which are the result of the child's own earnings or a gift made to the child, provided the requirements of all other exhibiting rules are met.

Animals or exhibits owned jointly by a Director and his/her minor child or a CEO and his/her minor child are considered as owned by the child in junior department classes only.

No show or contest official or member of his/her immediate family (i.e., spouses and any children or other relatives living in the official's household) shall enter or exhibit horses in any show or contest at which he/she is officiating, nor may any horse owned by such person be entered or exhibited. A show contest official is defined as any person performing the duties of a show manager, judge steward, show secretary, cutter or chariot race official, or any other horse contest official. Duties include but are not limited to: (a) contracting or hiring of judges; and, (b) acceptance of entries or entry fees.

### **302 GIFTS**

Gifts aggregating \$50 or more in a calendar year from a single source generally must be reported. The director must report tickets to athletic events, theatre presentations, concerts, or other events. If a director receives individual tickets or season passes to events held on the director's fairground, the director must report the fair market value based on actual use of the tickets or passes by the director and his or her guests or transferees.

A director should be aware that receipt and use of free tickets or other gifts may disqualify him or her from taking action concerning the activities of the individual or organization that gave the tickets or gifts. It is not good public business to accept gifts or free items from persons or entities who are doing business with the fair or who wish to do business with the fair.

### **303 FINANCIAL INTEREST IN CONTRACTS**

Directors are prohibited from being financially interested in a contract or sale in both his or her public and private capacity. A director may not contract with the director's fair nor make, participate in the making, or influence a decision of the board which they are a member if the director has a statutorily prohibited interest.

### **304 CALIFORNIA POLITICAL REFORM ACT (CPRA)**

The California Political Reform Act (CPRA) deals with conflict of interest situations on a case-by-case basis. This means that every situation must be assessed for its unique potential for conflict of interest in light of the facts involved. The conflict of interest prohibitions in the CPRA apply to directors who make decisions, participate in making decisions, or influence decision-making.

Before taking action, a director should answer the following three questions to determine whether a financial interest gives rise to a conflict of interest:

1. Does the director have one of the statutorily defined pecuniary interests?
2. Is it reasonably foreseeable that a decision in which the director participates could materially affect such pecuniary interest?
3. Will the effect of the decision be distinguishable from its effect on the public generally?

**Decision making** Decision making includes voting on a matter, appointing a person to a position, obligating the board to a course of action on an issue, or entering into a contract.

**Participation in decision making** This encompasses a broad range of activities beyond the most obvious action, such as voting. The Fair Political Practices Commission (FPPC), the agency primarily responsible for enforcing the CPRA, has

interpreted "participation" to include negotiations and advice by way of research, investigations, or preparation of reports or analysis for a board.

**Influencing decisions** The CPRA prohibits an official from "in any way attempting to use his or her official position to influence a governmental decision" when he or she has a financial interest. A director is prohibited from making contacts with the fair personnel or other attempts to influence a decision on behalf of his or her business entity, client, or customers.

**Foreseeability** Foreseeability is a factual case-by-case determination.

**Materiality** Materiality exists whenever a director knows, or has reason to know, that a decision will materially affect the director's economic interests. Once the director has knowledge, or should have knowledge, that the decision will materially affect the director's economic interests, a director's statement to the effect that the director can act impartially is not sufficient. The director must refrain from further participation in the decision. If a director is making a decision on an issue which will affect the general public's financial interest in the same manner as it does his or her own, the fact that it is affecting his or her materiality does not create a conflict of interest.

It is the policy of the Division of Fairs and Expositions to require DAAs to enforce this law. To non-DAA fairs, the Division recommends following a parallel protocol to avoid giving rise to a perception of misappropriation of public funds.

### **305 PUBLIC REPORTING OF FINANCIAL INTERESTS** **(Statement of Economic Interests)**

Upon assuming office and yearly thereafter, DAA directors must submit their official disclosure statements (Std. Form 700 - Statement of Economic Interests). These statements describe any investments or sources of income and gifts that potentially affect the actions of the director. All Statements of Economic Interests are public records and must be made available for public inspection at the fair during regular business hours. Directors who have specific questions related to filling out the Statement of Economic Interests should contact the Fair Political Practices Commission: 916.322.5660, toll free at 1.866.ASK.FPPC or by Internet at [www.fppc.ca.gov](http://www.fppc.ca.gov)

**Purpose** Disclosure of economic interests serves the twofold purpose of (i) making the assets and income of a director a matter of public record, and (ii) reminding a director who may be contemplating an action that would pose a conflict to disqualify himself or herself from participating in discussions and decisions as appropriate.

### **306 ETHICS ORIENTATION**

State officers and employees responsible for making state policy and members of state boards and commissions must complete an orientation or training program covering the various state agency ethics and conflict of interest laws and regulations. Anyone holding a position on January 1, 1999, which was subject to the ethics orientation requirement, was required to complete the orientation by December 31, 1999. Thereafter, new appointees must take the orientation within six months of assuming office. All appointees must re-take the orientation at least once during each consecutive two calendar years thereafter.

According to Government Code Section 11146(b), this law applies to individuals who hold a position wherein they must file a Statement of Economic Interest Form 700, and are exempt from civil service. According to the State Attorney General's Office and the Fair Political Practices Commission, this applies to members of state boards and commissions. Therefore, members of the District Agricultural Association Board of Directors are subject to the ethics orientation requirement.

# APPENDIX SECTION

# **CONFLICT OF INTEREST AND INCOMPATIBLE ACTIVITIES**

## **APPENDIX SECTION**

The following appendixes provide a summary of select California Conflict of Interest laws and Incompatible Activities applicable to State and local public offices and employees. References are made to additional Government Code sections which can be found on the Department of Justice, Office of the Attorney General Internet site, [www.caag.state.ca.us](http://www.caag.state.ca.us). A copy of the California statutes and cases can also be obtained from the Office of the Attorney General's at the previously noted Internet site or by phoning toll free at 800.952.5225 or (toll call) 916.322.3360.

The appendixes are organized into the following sections:

- Appendix C: Issue Spotter Checklist
- Appendix D: COI Provisions Under the Political Reform Act of 1974
- Appendix E; COI and Campaign Contributions
- Appendix F: Limitations on Former State Officials Appearing Before State Government Agencies
- Appendix G: COI in Contracts
- Appendix H: COI Limitations on State Contracts
- Appendix I: Incompatible Activities of Local Offices and Employees
- Appendix J: Incompatible Activities of State Offices and Employees
- Appendix K: The Common Law Doctrine of Incompatible Offices

## ISSUE SPOTTER CHECKLIST

## APPENDIX C

### LAW

Financial Conflicts of Interests  
Political Reform Act  
Gov. Code, § 87100 et seq.

Financial Interests in Contracts  
Gov. Code, § 1090 et seq.

### GUIDEPOSTS

Is a state or local official participating in a government decision?

Does the decision affect an interest in real property or an investment of \$1,000 or more held by the official? Or a source of income of \$250, or gifts to the official of \$290, or more?

If so, is there a reasonable possibility that the decision will significantly affect any of the interests involved?

Are the official's interests affected differently than those of the general public or a significant segment of the public?

If the answer to these questions is yes, the official may have a conflict of interests and be required to disqualify himself or herself from all participation in that decision. (See ch. I.)

Does a member of a board have a direct or indirect financial interest in a contract being made either by the board or by any agency under the board's jurisdiction?

If so, the contract may be void and any private gain, received by the official under the contract, may have to be returned.

Has any other state or local officer or employee participated in the making of a contract in which the official had a direct or indirect financial interest?

If so, the contract may be void and any private gain received by the official under the contract may have to be returned. (See ch. VI.)

## APPENDIX C

### Limitations on State Contracts Pub. Con. Code, § 10410

Is a state official (other than a part-time board member) involved in an activity, employment or enterprise, some portion of which is funded by a state contract?

Is a state official, while employed by the state, contracting with a state agency to provide goods or services?

If the answers to any of these questions are yes, a prohibited activity may have occurred. (See ch. VI., sec. B)

### Conflicts of Interests Resulting from Campaign Contributions Gov. Code, § 84308

Is there a proceeding involving a license, permit or entitlement for use?

Is the proceeding being conducted by a board or commission?

Were the board members appointed to office?

Has any board member received contributions of more than \$250 during the proceeding or within the previous 12 months from, within 3 months following a final decision in the proceeding, the applicant or any other person who would be affected by the decision?

If the answers to these questions are yes, the board member may have to disqualify himself or herself from participating in the decision. (See ch. III.)

### Appearance of Financial Conflicts of Interests Common Law

Court-made law, based on avoiding actual impropriety or the appearance of impropriety in the conduct of government affairs, may require government officials to disqualify themselves from participating in decisions in which there is an appearance of a financial conflict of interests. (See ch. XII.)

### Public Reporting of Financial Interests Political Reform Act; Gov. Code, §§ 87200-87313

Is the official a state or local officer or employee who participates in the making of government decisions?

If so, the official may be required to file a public report disclosing investments, real property, income and gifts. (See ch. II.)



## APPENDIX C

### Incompatible Activities

Gov. Code, § 1125 et seq. (local officials);

Gov. Code, § 19990 (state officials)

Is an official using his or her government position or using government information or property in an improper manner?

Has the official's agency or appointing authority adopted an incompatible activities statement?

If the activity has been prohibited by an incompatible activities statement, the official can be ordered to stop the practice and possibly be disciplined. (See ch. IX regarding local officials, and ch. X regarding state officials.)

### Incompatible Offices

Common Law

Does a single official hold two offices simultaneously? (For purposes of this common law doctrine, an employment is not considered to be an office.)

Do the offices overlap in jurisdiction, such that the official's loyalty would be divided between the two offices?

If the answers to these questions are yes, the holding of the two offices may be incompatible and the first assumed office may have been forfeited by operation of law. (See ch. XI.)

### Transportation, Gifts or Discounts

Cal. Const., art. XII, § 7

Is a state or local official, other than an employee, receiving a gift or discount in the price of transportation from a transportation company? (The prohibition covers inter or intrastate transportation in connection with either government or personal business.)

If the answer to this question is yes, the officer may have forfeited his or her office. (See ch. VIII.)

## APPENDIX C

### Retired State Officials and Their Former Agencies

#### Political Reform Act

Gov. Code, §§ 87400 - 87405

Is a former state administrative official being compensated, by other than the State of California, to appear before any court or state administrative agency, in a judicial or quasi-judicial proceeding?

If so, did the official while in office participate personally and substantially in the proceeding?

If so, the official may be prohibited from appearing in the proceeding. (See ch. IV, sec. B.)

Gov. Code, § 87406

Is a former state official being compensated to communicate with a state agency within a year of his or her retirement? (See ch. IV, sec. C.)

### Retired State Officials and Their Contracts

Pub. Con. Code, § 10411

Is a former state official contracting with the former agency to provide goods and services?

If the answer to this question is yes, a prohibited activity may have occurred. (See ch. VII, sec. C.)

## CONFLICT OF INTERESTS PROVISIONS UNDER THE POLITICAL REFORM ACT OF 1974

Government Code Section 87100 Et Seq.\*

### A. OVERVIEW

The Political Reform Act, Government Code section 81000 et seq. (hereinafter "PRA" or "act"), was enacted by initiative measure ("Proposition 9") in June 1974. It is the starting point in any consideration of conflict of interests laws in California. Chapter 7 of the act (Gov. Code, §§ 87100-87500)<sup>1</sup> deals exclusively with conflicts of interests.

One of the legislative findings recited as a reason for the act sheds some light on the purpose of the conflict of interests provisions: "Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them."

The stated intent of the act was to set up a mechanism whereby "Assets and income of public officials which may be materially affected by their official actions . . . [are] disclosed and in appropriate circumstances the officials . . . [are] disqualified from acting in order that conflicts of interest may be avoided."

The Fair Political Practices Commission (hereinafter the "FPPC" or "commission") is the agency primarily charged with the responsibility of advising officials and the public and enforcing the conflict of interests provisions of the act.

### B. THE BASIC PROHIBITION

Under the act, public officials are disqualified from participating in government decisions in which they have a financial interest. The act does not prevent officials from owning or acquiring financial interests which conflict with their official duties nor does the mere possession of such interests require officials to resign from office.

The disqualification provision of the act hinges on the effect a decision will have on a public official's financial interests. When a decision is found to have the requisite effect, the official is disqualified from making, participating in the making, or using his or her official position to influence the making of that decision at any level of the decision making process.

---

<sup>1</sup>All section references in this chapter hereafter refer to the Government Code unless otherwise specified.

## APPENDIX D

By establishing a broad objective disqualification standard, the PRA attempted to cover both actual and apparent conflicts of interests between a public official's private interests and his or her public duties. It is not necessary to show actual bias on the part of the official and it may not even be necessary to show that an official's assets or the amount of his or her income will be affected by a decision in order to trigger disqualification. Other more attenuated effects may also bring about an official's disqualification.

Even though this is a broad disqualification requirement, it is by no means all inclusive. Conflicts arising out of matters other than a financial interest are outside the purview of the act, e.g., friendship, blood relationship, or general sympathy for a particular viewpoint.

To determine whether a conflict of interests exists under the act, five questions must be asked:

1. Is a public official involved?
2. Does the official have a statutorily defined economic interest?
3. Is the official making, participating in the making of, or using his or her official position to influence the making of a governmental decision?
4. Is it reasonably foreseeable that the decision could materially affect the official's economic interest?
5. Will the effect of the decision on the public official's economic interest be distinguishable from its effect on the public generally?

If the answer to all five of these questions is yes, a conflict of interests exists and the disqualification requirement is activated.

It should be noted at the outset that the act deals with conflict of interests situations on a transactional, or case-by-case, basis. This means that situations must be assessed for possible conflicts of interests in the light of their individual facts. The act demands continual attention on the part of officials. They must examine each transaction from the act's perspective to determine if a conflict of interests exists which triggers the disqualification requirement. When an official is disqualified, the financial interest creating the conflict as well as the act of disqualification, should be publicly announced.

## III.

## CONFLICTS OF INTERESTS AND CAMPAIGN CONTRIBUTIONS

Government Code Section 84308

## A. OVERVIEW

As previously noted in chapter I, discussing financial conflicts of interests under the Political Reform Act of 1974 (hereinafter "PRA" or "act"), campaign contributions are not a basis for disqualification by public officials.

However, based on the increased concern about the link between campaign contributions and alleged conflicts of interests, the Legislature enacted section 84308 in 1982. Note: state or local laws may impose limits on campaign contributions that are lower than \$250.00

## B. THE BASIC PROHIBITION

Briefly stated, Government Code section 84308 provides the following:

- (1) The law applies to proceedings on licenses, permits, and entitlements for use pending before certain state and local boards and agencies.
- (2) Covered officials are prohibited from receiving or soliciting campaign contributions of more than \$250 from parties or other financially interested persons during the pendency of the proceeding and for three months after its conclusion.
- (3) Covered officials must disqualify themselves from participating in the proceeding if they have received contributions of more than \$250 during the previous 12 months from a party or a person who is financially interested in the outcome of the proceeding.
- (4) At the time parties initiate proceedings, they must list all contributions to covered officials within the previous 12 months.
- (5) The law expressly exempts directly elected state and local officials. However, the exemption does not apply when they serve in a capacity other than that for which they were directly elected.

---

<sup>5</sup>All section references in this chapter hereafter refer to the Government Code unless otherwise specified.

## APPENDIX E

A more comprehensive description of the provisions of section 84308 is set forth below. If you have specific questions, you should consult the actual wording of the statute, and the regulations of the Fair Political Practices Commission (hereinafter "FPPC" or "commission").

### C. PERSONS COVERED

The law applies to two types of individuals: covered officials and interested persons.

Covered officials typically include state and local agency heads and members of boards and commissions. (§ 84308(a)(3); C.C.R., tit. 2, § 18438.1.) Alternates to elected or appointed board members and candidates for elective office in an agency also are covered. (§ 84308(a)(4); C.C.R., tit. 2, § 18438.1.) Covered officials do not include city councils, county boards of supervisors, the Legislature, constitutional officers, the Board of Equalization, judges and directly elected boards and commissions. However, these officials are not exempt from coverage when they sit as members of other boards or bodies (e.g., joint powers agencies, regional government bodies, etc.). (§ 84308(a)(3), (a)(4); C.C.R., tit. 2, § 18438.1 et seq.)

Interested persons refers to persons who are financially interested in the outcome of specified proceedings (e.g., parties and participants). Parties (e.g., applicants or subjects of the proceeding) are always presumed to be financially interested in the outcome. In addition, persons or entities which satisfy both of the following criteria are financially interested and are called "participants": (1) they foreseeably would be materially financially affected by the outcome of the decision as those terms are defined in Government Code section 87100 et seq.; and (2) they have acted to influence the decision through direct contacts with the officials or their staffs. (§ 84308(a)(1), (a)(2), (b) and (c); C.C.R., tit. 2, § 18438.4.)

When a closely held corporation is a party or participant in a proceeding, the requirements of the law apply to the majority stockholders. (§ 84308(d).)

## IV.

**LIMITATIONS ON FORMER STATE OFFICIALS  
APPEARING BEFORE STATE GOVERNMENT AGENCIES**

Government Code Section 87400 Et Seq.

**A. OVERVIEW**

Historically, there has been a regular flow of personnel between government and the private sector. Sometimes, individuals from the private sector enter government for a short tenure of service and then return to their private enterprise occupations. Other times, individuals with longstanding government service who have developed expertise choose to leave government service and join the private sector. In still other instances, elected officers retire or are defeated and, therefore, return to private industry.

Effective in 1981 the Political Reform Act of 1974 (hereinafter "PRA" or "act") was amended to include Government Code section 87400 et seq.<sup>6</sup> In 1990, the Legislature enacted categorical restrictions on post-government employment to coincide with the restrictions previously placed on government officials who participated in specific judicial, quasi-judicial or similar proceedings. Section 87406 places restrictions on former government officials from contacting specified government agencies. These sections constitute the only general state law regulating the activity of former government officials who enter the private sector. (See Pub. Contract Code, § 10411 for specific prohibition.)

In addition, the 1990 legislation prohibits government officials from participating in government decisions directly relating to any person with whom the official is negotiating concerning future employment. (§ 87407.)

If a former local government official wishes to influence his or her former agency, the official should consult local laws and rules to determine if there are limitations on his or her activities. Special provisions for air pollution control districts appear in section 87406.1.

**B. LIFETIME RESTRICTIONS****1. The Basic Prohibition**

The basic prohibition contained in section 87400 et seq. provides that: (1) no former state administrative official, (2) shall for compensation act as agent or attorney for any person other than the State of California, (3) before any court or state administrative agency, (4) in a judicial or quasi-judicial proceeding if previously the official personally and substantially participated in the proceeding in his or her official capacity.

---

<sup>6</sup>All section references in this chapter hereafter refer to the Government Code unless otherwise specified.

## APPENDIX F

If the elements of the prohibition are found to be present, a former state administrative official is forever banned from acting as an agent or attorney in a covered proceeding or from assisting another to so act.

### 2. State Administrative Official

State administrative officials include every member, officer, employee or consultant of a state administrative agency who, as part of his or her official responsibilities, engages in any judicial, quasi-judicial or other proceeding in other than a purely clerical, secretarial or ministerial capacity. (§ 87400(b).) State administrative agencies include every office, department, division, bureau, board and commission of state government, but do not include the Legislature, the courts or any agency in the judicial branch. (§ 87400(a).)

### 3. Compensation For Representation As Agent Or Attorney

The statutory prohibition only extends to former state administrative officials who, for compensation, represent people as agents or attorneys. (§ 87401, 87402.) Former officials who provide representation without compensation are not covered by the prohibition. However, representing an individual as part of one's employment does constitute receiving compensation for such representation. A firm which has as one of its partners a former administrative official generally may not represent persons in covered proceedings, because the official ultimately will benefit directly or indirectly from the compensation paid to the firm for such representation. However, where a former administrative official merely shares office space and some other overhead expenses with another attorney, that attorney would not be prohibited from handling such cases so long as the former administrative official were in no way involved in fee splitting or the representation. (*In re Zatopa*, No. 82-95.)

The statute does specify the types of conduct which constitute prohibited representation of another in a covered proceeding (e.g., § 87402). It prohibits any formal or informal appearance or any written or oral communication with an intent to influence the covered proceeding. The prohibition on representation only applies to proceedings in which the State of California is a party or in which it has a direct or substantial interest. (§ 87401(a), (b).) In addition, the statute prohibits former administrative officials, for compensation, from aiding or assisting another to represent a person in a covered proceeding. (§ 87402.) Thus, if a former administrative official would be prohibited from personally acting as the client's representative, he or she is also prohibited, for compensation, from aiding or assisting another in such representation.

### 4. Court Or Quasi-Judicial Proceeding

It is important to note that the statute only applies to judicial, quasi-judicial or other proceedings involving specific parties before a court or administrative agency (§ 87400(c); *In re Xander*, No. A-86-162; *In re Berrigan*, No. A-86-045). Thus, quasi-legislative proceedings of an agency for the purposes of adopting general regulations do not activate the prohibition. (*In re Nutter*, No. A-86-042; *In re Swoap*, No. A-86-199.) Participation in a lawsuit, an administrative enforcement



action under section 11500 of the Government Code, or application proceedings are specifically covered. (§ 87400(c).) Any other proceeding which involves a controversy or ruling concerning specific parties also is covered. (§ 87400(c).)

## 5. Previous Participation

Once it has been determined that a former administrative official is prepared to act as an agent or attorney for another in a court or in an administrative proceeding, it must be determined whether the former official participated in the proceeding during his or her official tenure. (*In re Anderson*, No. A-86-324; *In re Petrillo*, No. A-85-255.) If so, the elements of the prohibition are complete and the former administrative official is prevented from acting in a representative capacity. (§ 87401.) A former administrative official is deemed to have participated in a proceeding only if he or she were personally and substantially involved in some aspect. (§ 87400(d).) The statute specifically covers personal and substantial participation in a decision, the approval or disapproval of a decision, the making of a formal recommendation and the rendering of substantial advice. In addition, involvement in an investigation or the use of confidential information qualifies as participation under the statute. (§ 87400(d).) However, the statute specifically exempts from coverage the rendering of legal advice to departmental or agency staff which does not involve specific parties.

Unless covered by a specific exemption, a former administrative official who participated in a covered proceeding in his or her official capacity, is forever banned from acting as an agent or attorney in that proceeding, or from assisting another to do so. Section 87403 provides several limited exceptions to this general prohibition.

The statute does not act to prevent a former administrative official from making a statement which is based on his or her own special knowledge of the area, provided that the official does not receive any compensation, other than witness fees as set forth by law or regulation. (§ 87403(a).) The statute also exempts communications made solely for the purpose of providing information if the court or administrative agency to which the communication is directed makes specified findings. (§ 87403(b).) The court or administrative agency must find that the former administrative official has outstanding and otherwise unavailable qualifications, that the proceeding in question requires such qualifications, and that the public interest would be served by participation of the former official. Lastly, where a court or administrative agency has made a final decision but has retained jurisdiction over the matter, it may permit an appearance or communication from the former administrative official if the agency of former employment gives its consent by determining that the former administrative official left office at least five years previously and the public interest would not be harmed by the appearance or communication.

## 6. Enforcement And Disqualification

Upon petition of any interested person, or party, the court or administrative agency may act to enforce the terms of the statutory prohibition. After notice to the former administrative official, the court or administrative agency may exclude him or her

from further participation or from assisting or counseling any other participant. (§ 87404.) In addition, the administrative, civil and criminal sanctions available for enforcement of the PRA apply to section 87400 et seq. (See chapter V of this pamphlet.)

## C. ONE-YEAR PROHIBITION

### 1. The Basic Prohibition

The restrictions prohibit the following former officials from accepting compensation to act as the agent, attorney or representative of another person for purposes of influencing specified government agencies through oral or written communications.

- With respect to members of the Legislature, the law imposes a one-year prohibition on communications with members of the Legislature, members of any legislative committee or subcommittee, or any officer or employee of the Legislature for the purpose of influencing legislative action. (§ 87406(b).)
- With respect to an elected state officer (excluding legislators), the law imposes a one-year prohibition on communications with any state administrative agency, for the purpose of influencing any administrative action or any action or proceeding concerning a permit, license, grant or contract, or the sale or purchase of goods or property. (§ 87406(c).)
- With respect to a state designated employee<sup>7</sup> or member of a state body, the law imposes a one-year prohibition on communications with any state administrative agency, which either employed<sup>7</sup> or was represented by the former official during the last 12 months of his or her government service, for the purpose of influencing: any administrative or legislative action; any action or proceeding concerning a permit, license, grant or contract; or the sale or purchase of goods or property. (§ 87406(d)(1).)

Appearances before a court, a state administrative law judge, or the Workers Compensation Appeals Board are not subject to the prohibitions of section 87406. Also, uncompensated appearances are not subject to the prohibition. The prohibition is not applicable to officials who transfer between agencies (§ 87406(e)), and designated employees of the Legislature (§§ 87406(d) and 87400(a)).

### 2. Administrative Or Legislative Action

"Administrative action" means the proposal, drafting, development, consideration, amendment, enactment or defeat of any rule, regulation or other action in any rate-making proceeding or any quasi-legislative proceeding. (§ 82002.) "Legislative

---

<sup>7</sup>A "designated employee" refers to an employee whose position has been designated in his or her agency's conflict of interest code. (See Chapter II of this pamphlet.) For purposes of this pamphlet, the term "designated employee" refers to any officer, consultant or employee of the agency who participates in the making of decisions which foreseeably could have a material financial effect on any of his or her economic interests, since such persons are covered by the prohibition and should be included in the agency's conflict of interest code.

action" means the drafting, introduction, consideration, modification, enactment or defeat of any bill, resolution, amendment, report, nomination, or other matter by the Legislature or by either house or any committee thereof, or by a member or employee of the Legislature acting in his or her official capacity. "Legislative action" also means the action of the Governor in approving or vetoing any bill. (§ 82037.)

#### **D. JOB SEEKING BY GOVERNMENT OFFICIALS**

Prior to leaving government office or employment, the act prohibits state administrative officials as defined in section 87400, elected state officers and designated employees of the Legislature from making, participating in the making or using their official position to influence the making of government decisions directly relating to any person with whom they are negotiating, or have any arrangement, concerning prospective employment. (§ 87407.)



## CONFLICTS OF INTERESTS IN CONTRACTS

Government Code Section 1090 Et Seq.

## A. OVERVIEW

The common law prohibition against "self-dealing" has long been established in California law. (*City of Oakland v. California Const. Co.* (1940) 15 Cal.2d 573, 576.) The present Government Code section 1090,<sup>9</sup> which codifies the prohibition as to contracts, can be traced back to an act passed originally in 1851 (Stats. 1851, ch. 136, § 1, p. 522) and has been characterized as "merely express legislative declarations of the common-law doctrine upon the subject." (*Stockton P. & S. Co. v. Wheeler* (1924) 68 Cal.App. 592, 597.)

Frequently amended in its details, the concept of the prohibition has remained unchanged. In fact, this office and the courts often refer to very early cases when discussing possible violations of this fundamental precept of conflict of interests law. (See, for example, *Berka v. Woodward* (1899) 125 Cal. 119.)

In 59 Ops.Cal.Atty.Gen. 604 (1976), this office specifically concluded that the Political Reform Act (hereinafter "PRA" or "act") did not repeal section 1090 et seq. ". . . but that the PRA will control over section 1090 et seq. where the PRA would prohibit a contract otherwise allowable under section 1090 et seq."

Government Code section 1090 basically prohibits the public official from being financially interested in a contract or sale in both his or her public and private capacities. In *Thomson v. Call* (1985) 38 Cal.3d 633, 649, the California Supreme Court reiterated the long-standing purpose and framework of section 1090. The purpose of section 1090 is to make certain that ". . . every public officer be guided solely by the public interest, rather than by personal interest, when dealing with contracts in an official capacity. Resulting in a substantial forfeiture, this remedy provides public officials with a strong incentive to avoid conflict-of-interest situations scrupulously." (*Id.* at p. 650.) The Court also stated:

" . . . the principal has in fact bargained for the exercise of all the skill, ability and industry of the agent, and he is entitled to demand the exertion of all of this in his own favor." [Citation.] (*Thomson v. Call, supra*, 35 Cal. 3d at p. 648; see also *Campagna v. City of Sanger* (1996) 42 Cal.App.4th 533, 542.)

" . . . . .

---

<sup>9</sup>All section references in this chapter hereafter refer to the Government Code unless otherwise specified.

## APPENDIX G

"It follows from the goals of eliminating temptation, avoiding the appearance of impropriety, and assuring the city of the officer's undivided and uncompromised allegiance that the violation of section 1090 cannot turn on the question of whether actual fraud or dishonesty was involved. Nor is an actual *loss* to the city or public agency necessary for a section 1090 violation. . . ." (*Id.* at p. 648; emphasis in original.)

" . . . . .

"In short, if the interest of a public officer is shown, the contract cannot be sustained by showing that it is fair, just and equitable as to the public entity. Nor does the fact that the forbidden contract would be more advantageous to the public entity than others might be have any bearing upon the question of validity. (*Capron v. Hitchcock* (1893) 98 Cal. 427.) . . . "  
(*Id.* at p. 649.)

### B. THE BASIC PROHIBITION

Section 1090 provides that an officer or employee may not make a contract in which he or she is financially interested. Any participation by an officer or an employee in the process by which such a contract is developed, negotiated and executed is a violation of section 1090. If the governmental discussion in question does not involve a contract, or if a contract in which an officer or employee has a financial interest is not ultimately executed, no violation exists. A board member is conclusively presumed to have made any contract executed by the board or an agency under its jurisdiction, even if the board member has disqualified himself or herself from any and all participation in the making of the contract.

The prohibition applies to virtually all state and local officers, employees and multimember bodies, whether elected or appointed, at both the state and local level. Section 1090 does not define when an official is financially interested in a contract. However, the courts have applied the prohibition to include a broad range of interests. The remote interest exception set forth in section 1091 enumerates specific interests which trigger abstention for board members but which do not prevent the board from making a contract. The interests set forth in section 1091.5 are labeled "non-interests" in that, once disclosed, they do not prevent an officer, employee or board member from participating in a contract.

Any contract made in violation of section 1090 is void and cannot be enforced. In addition, an official who commits a violation may be subject to criminal, civil and administrative sanctions.

## VII.

**CONFLICT OF INTERESTS LIMITATIONS  
ON STATE CONTRACTS**

California Public Contract Code Sections 10410-10430

**A. OVERVIEW**

Sections 10410<sup>11</sup> and 10411 of the California Public Contract Code provide a two-level approach to potential conflicts of interests in connection with the making of state contracts. Section 10410 concerns potential conflicts of interests by persons currently holding office and section 10411 concerns potential conflicts of interests by those who have left state service. The prohibitions do not apply to unsalaried members of part-time boards and commissions who only receive payments in connection with preparing for meetings and per diem for travel and accommodations. (§ 10430(e).) The code also expressly exempts the Board of Regents for the University of California from its coverage and provides a limited exception for the trustees of the California State University. (§ 10430(a), 10430(c).)

Other specific exemptions are contained in section 10430(b)-(g). They include contracts for computer and telecommunication systems, architectural land engineering services, specified contracts exempt by section 10295, and contracts by spouses of state officers or employees and their employers for the provision of services to regional centers for persons with developmental disabilities pursuant to section 4648 of the Welfare and Institutions Code. With these exceptions, sections 10410 and 10411 generally cover all appointed officials, officers and civil service employees of state government.

**B. THE BASIC PROHIBITION REGARDING CURRENT STATE OFFICERS AND EMPLOYEES**

Reduced to its essentials, section 10410 provides that: (1) no state officer or employee (2) shall engage in any employment, activity or enterprise (3) from which the officer or employee receives compensation, or in which he or she has a financial interest and (4) which is sponsored or funded, in whole or in part, by any state agency or department through a contract. An exception is provided if the employment or enterprise is required as a condition of the individual's regular state employment. In addition to the general prohibition, section 10410 specifically prohibits any covered official from contracting on his or her own behalf with a state agency as an independent contractor to provide goods or services.

---

<sup>11</sup>All section references in this chapter hereafter refer to the California Public Contract Code unless otherwise specified.

The prohibition contained in section 10410 does not appear to be a transactional disqualification provision such as that contained in the Political Reform Act. Rather, it is similar to the prohibition in Government Code section 1090 which forbids an individual from making a contract in which he or she has a financial interest. In the case of section 10410, the statute prohibits an individual from engaging in certain activities which are supported in whole or in part by a state contract. By prohibiting the "activity," the statute in effect prohibits the making of state contracts in which the individual has the specified interest. Thus, in many instances, the provisions of section 10410 will be duplicative of the provisions of Government Code section 1090. However, the provisions of section 10410 apply only to state contracts and are different than the restrictions contained in Government Code section 1090 in certain respects.

With respect to the prohibition against state officers or employees contracting on their own behalf as independent contractors, to provide goods or services, this office has orally advised that state employees who prepare educational film, video and printed materials as a part of their state employment cannot contract with another department as independent contractors to provide similar services in their off-hours.

### **C. THE BASIC PROHIBITION REGARDING FORMER STATE OFFICERS AND EMPLOYEES**

Section 10411 regarding former state officials is divided into two parts. Subsection (a) involves a two-year prohibition against participating in a contract with which the official was involved during his or her state service. Subsection (b) involves a one-year prohibition of any contract by former policy making officials with their prior agencies.

Section 10411(a) provides that no retired, dismissed, separated or formerly employed state officer or employee may enter into a state contract in which he or she participated in any of the negotiations, transactions, planning, arrangements or any part of the decision making process while employed in any capacity by an agency or department of state government. The statute does, however, place a two-year limit on the application of this statutory prohibition commencing on the date the person left state employment. For application of similar provisions under Government Code section 1090, see *Stigall v. City of Taft, supra*, 58 Cal.2d 565 and 66 Ops.Cal.Atty.Gen. 156 (1983).

Section 10411(b) establishes a 12-month moratorium on any former state officer or employee, entering into a contract with his or her former agency, if the covered official held a policy making position with the agency in the same general subject area as the proposed contract within 12 months prior to his or her departure from state government. The statute expressly exempts contracts for expert witnesses in civil cases and contracts for the continued services of an attorney regarding matters with which the attorney was involved prior to departing state service.



## INCOMPATIBLE ACTIVITIES OF LOCAL OFFICERS AND EMPLOYEES

Government Code Section 1125 Et Seq.

### A. OVERVIEW

These sections, which were originally enacted in 1971, provide a statutory prohibition against any officer or employee of a local agency from engaging in any employment or other activity which is in conflict with his or her public duties. Government Code section 1125<sup>12</sup> defines local agency to mean a "county, city, city and county, political subdivision, and municipal corporation." Section 1126 contains the basic prohibition, and focuses on the remunerative activities of agency officials. See section 1098 concerning prohibition against disclosure of confidential information, which is punishable as a misdemeanor.

### B. THE BASIC PROHIBITION

Section 1126 provides that a local officer or employee shall not engage in any employment, activity or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her official duties or the duties, functions or responsibilities of his or her appointing authority or employing agency. This general prohibition usually is not self-executing and, in order to give notice of what activities are incompatible, must be accomplished through promulgation of a statement of incompatible activities by the agency. The incompatible activities statement may address a broad range of conflict of interests issues. But an officer or an employee may not have sanctions imposed on him or her unless the officer or employee has violated a duly noticed statement. If a statement is adopted, the local agency shall enact rules providing notice to employees regarding prohibited activities, disciplinary action and appeal procedures.



## INCOMPATIBLE ACTIVITIES OF STATE OFFICERS AND EMPLOYEES

Government Code Section 19990

### A. OVERVIEW

The prohibitions applicable to state officers and employees as contained in Government Code section 19990<sup>14</sup> are similar to those applicable to local officials under section 1126 (see chapter IX of this pamphlet). Like section 1126, section 19990 creates a general prohibition followed by specific areas of conduct which should be covered in an incompatible activities statement adopted by an employee's appointing power.

### B. THE BASIC PROHIBITION

Initially, section 19990 prohibits state officers and employees from engaging in any activity or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to their duties as state officers or employees. Each state agency is required to develop, subject to the approval of the Department of Personnel Administration, a statement of incompatible activities for its officers and employees. As discussed below, the statute sets forth several activities that are deemed to be inconsistent, incompatible or in conflict with the duties of a state officer or employee.

### C. PROHIBITION MAY NOT BE SELF-EXECUTING

In construing section 1126, which is applicable to local officers and employees, the court in *Mazzola v. City & County of San Francisco, supra*, 112 Cal.App.3d 141, concluded that the general prohibition was not self-executing. There, the City and County of San Francisco had appointed and reappointed a plumbers' union official to the position of airport commissioner. At the time of the appointments, the city had full knowledge that the commissioner was a union official. After several unions, including the plumbers' union, engaged in a lengthy strike against the city, the Board of Supervisors removed the commissioner from office based on "official misconduct." The court set aside that decision, stating that the prohibition against incompatible activities could be exercised only through the agency's adoption of an incompatible activities statement which specifically notified employees of the prohibited activities. The court took the position that a general ban on activities which were inconsistent, incompatible, in conflict with or inimical to one's public duties was too vague to have any effect without the adoption of specific guidelines by the employee's agency. The same argument could be made with respect to section 19990.

---

<sup>14</sup>All section references in this chapter hereafter will refer to the Government Code unless otherwise specified.

**D. PERSONS COVERED**

There is some question as to whether section 19990 covers state officers who are outside the state civil service. The provision concerning the incompatible activities statement provides:

"Each appointing power shall determine, subject to approval of the department, those activities which, for employees under its jurisdiction, are inconsistent, incompatible or in conflict with their duties as state officers or employees. . . ." (§ 19990; emphases added.)

In the past, section 19251, predecessor to section 19990, was interpreted by this office to apply to civil service employees only. (53 Ops.Cal.Atty.Gen. 163 (1970).) This conclusion, in part, was based upon the fact that the prohibition and the remedies were placed in the civil service portions of the Government Code. However, in 1981, section 19251 was repealed and replaced with section 19990, which is contained in the portion of the Government Code applicable to the Department of Personnel Administration. These provisions are applicable to both civil service and noncivil service employees and officers of state government. (§ 19815 et seq.) For the purposes of the Government Code sections under the jurisdiction of the Department of Personnel Administration, section 19815(d) defines the term "employee" to include ". . . all employees of the executive branch of government who are not elected to office."

Thus, there are strong indications that section 19990 covers all nonelected, executive branch officers and employees, not just those who are members of the civil service. However, the only remedy for violating an incompatible activities statement continues to appear in section 19572(r) as a reason for imposing discipline on a civil service employee. In addition, the term "appointing power" is defined in section 18524 as the entity authorized to appoint civil service personnel. Nevertheless, these factors do not conclusively bar the application of section 19990 to noncivil service personnel. For example, non-civil service employees could be subject to disciplinary action or removal under the terms of their appointment.

**E. PROHIBITED ACTIVITIES**

Only those outside activities that are clearly incompatible, inconsistent or in conflict with the employee's public duties may be restricted. (73 Ops.Cal.Atty.Gen. 239 (1990); see also *Keeley v. State Personnel Board* (1975) 53 Cal.App.3d 88 (prison guard terminated because of his ownership and operation of a liquor store).) The types of activities specifically enumerated for coverage by incompatible activities statements include: using the prestige or influence of the state for private gain; using state facilities, time, equipment, or supplies for private gain; using confidential information for private gain<sup>15</sup>; receiving compensation from other than the state for the performance of state duties; performing private activities which later may be subject to the control, review, inspection, audit, or enforcement by the officer or employee; and receiving anything of value from a person seeking to do business with the official's agency where the item of value could be reasonably interpreted as having been intended to influence the official. Section 19990 specifically states that incompatible activities shall include, but are not limited to, the enumerated areas of conduct specified in the statute.

<sup>15</sup>See also Government Code section 1098, which prohibits the disclosure of confidential information for pecuniary gain.

## THE COMMON LAW DOCTRINE OF INCOMPATIBLE OFFICES

### A. OVERVIEW

The doctrine of incompatibility of office concerns a potential clash of two public offices held by a single official. Thus, the doctrine concerns a conflict between potentially overlapping public duties. (*People ex rel. Chapman v. Rapsey* (1940) 16 Cal.2d 636; see also *Mott v. Hortsmann* (1950) 36 Cal.2d 388, and 56 Ops.Cal.Atty.Gen. 488 (1973).) This is distinguishable from the concept of conflicts of interests which involves a potential clash between an official's private interests and his or her public duties. Confusion of these concepts sometimes results from the use of the term "incompatibility" in connection with the doctrine of incompatibility of offices on the one hand and the conflict of interests notion of incompatible activities on the other. (55 Ops.Cal.Atty.Gen. 36, 39 (1972).)

### B. THE BASIC PROHIBITION

To fall within the common law doctrine of incompatibility of office, two elements must be present. (68 Ops.Cal.Atty.Gen. 337 (1985).) First, the official in question must hold two public offices simultaneously. Second, there must be a potential conflict or overlap in the functions or responsibilities of the two offices.

The doctrine of incompatibility of offices was announced in the landmark case of *People ex rel. Chapman v. Rapsey*, *supra*, 16 Cal.2d at pp. 636, 641-642 (hereinafter "*Rapsey*"). In that case the court outlined issues which must be addressed in evaluating incompatibility of office problems: whether there is any significant clash of duties or loyalties between the offices; whether considerations of public policy make it improper for one person to hold both offices; and whether either officer exercises a supervisory, auditory, appointive, or removal power over the other.

In *Rapsey*, a city judge accepted an appointment as city attorney. The court concluded that the two positions in question were public offices and that there was a significant clash in their respective duties and functions.

